

**CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.**

O.A.210/150/2017

Date of decision : December 02nd, 2019.

**Coram: Dr.Bhagwan Sahai, Member (Administrative)
R.N. Singh, Member (Judicial).**

Parul Hasmukh Rathod,
Age 35 years,
Working as Teacher Grade-I
(Contract)
Residing at.H. No. 6,
Bhamti Mtafalia,
Moti Daman. 396220.

.. Applicant.

(By Advocate Shri Vicky Nagrani).

Versus

1. Union of India
Through the Administrator,
Union Territory of Diu
Daman and Dadra and Nagar Haveli,
Secretariat,
Moti Daman, Pin code-396220.
2. The Secretary-Education
UT Administration of Daman & Diu,
Secretariat Building, Fort,
Moti Daman, Daman (UT),
Moti Daman 396 220.
3. Director of Education
UT Administration of Daman & Diu
Secretariat Building, Fort,
Moti Daman, Daman (UT),
Moti Daman 396220.

4. Manahar Sakar Solaki.

5. Dhosdi Jayaben Natwarlal.

.. Respondents.

(By Advocate Shri V. S. Masurkar).

O R D E R (O R A L)
Per : R. N. Singh, Member (J)

Present.

1. Shri Vicky Nagrani, learned counsel for the applicant.
2. Shri V. S. Masurkar, learned counsel for the respondents.
3. Heard the learned counsels for the parties.
4. The applicant has filed the present OA under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

"a. this Hon'ble Tribunal may graciously be pleased to call for the records of the case from the Respondents and after examining the same quash and set aside the impugned list dated 10.02.2017 of Teacher Grade I and Assistant Teacher only to the extent of Gujarati and Hindi Subject and the Respondents be restrained from terminating the services of the Applicant.

b. this Hon'ble Tribunal may further be pleased to direct the Respondents to consider the cases of Applicants for Appointment on the post of Teacher Grade-I and Assistant Teacher Forthwith.

c. costs of the application be provided for.

d. any other and further order as this Hon'ble Tribunal deems fit in the nature and circumstances of the case be passed."

5. The precise facts leading to the present application as contended by the learned counsel are

that the applicant belongs to the ST community in the Union Territory of Dadra and Nagar Haveli and she is physically challenged. The applicant was engaged as Teacher, Grade-1 (Gujrati) on contract basis after due selection process and she had been working as such since 06.11.2013 till her contract was discontinued in the year 2018. On 25.09.2014 the respondents have issued two different advertisements for filling up the 35 posts of Teacher Grade-1 and 75 posts of Assistant Teacher on regular basis.

6. In pursuance of such advertisements the applicant applied for both the posts i.e. Teacher Grade-1 (Gujrati) and Assistant Teacher (Gujrati). She participated in the selection process in pursuance of the said two advertisements. When the results were prepared by the respondents for the aforesaid posts, the applicant came to know that her name came in the list of successful candidates for the post of Teacher Grade-1 (Gujrati) under the Physically Handicapped quota. However, the said list was cancelled /withdrawn by the respondents and they issued a revised list of successful candidates in which the applicant's name came in the list of successful candidates for the post of Assistant Teacher (Gujrati) under physically handicapped quota.

The applicant as required underwent medical examination and passed the same also. However, the such list was also cancelled/withdrawn by the respondents for the reasons best known to them.

7. Again, the respondents issued revised list of successful candidates for the aforesaid two posts, however, the name of the applicant did not figure in such revised list. The learned counsel for the applicant argues that the respondents were duty bound to follow reservation roster in view of the constitutional provisions as well as necessary instructions of the Government on the subject. However, the respondents ignored the same and did not follow the recruitment rules while preparing the final selection list of successful candidates.

8. Aggrieved of the same the applicant has approached this Tribunal by way of the present application.

9. In response to the notice from this Tribunal, the respondents have filed reply. The respondents have disputed and denied the claim of the applicant made in the OA.

10. The learned counsel for the applicant further argues that application of reservation roster has been mandatory for the respondents and non

compliance thereof makes the list prepared by the respondents as non-est in the eyes of law. He further submits that similarly placed persons against the same selection process had approached this Tribunal by way of OA No.41/2016, decided on 07.02.2019 (Annexure MP-2) titled **Ms. Tanvee Harilal Chouhan Vs. Union of India** in OA No.41/2016 and the said OA was partly allowed by this Tribunal with following orders:

"6. In the present recruitment, the learned counsel for the respondents informs that subsequent to the declaration of the panel out of 35 advertised posts, 20 appointment orders were issued and these 20 persons have joined as Teacher Grade-I in their appointed category/location. It is also noted in the context that all these appointees were appointed and posted and reported their duties and this has occurred during the pendency of this OA. It is amply clear that the position in law has been settled by the Hon'ble Apex Court in upholding the judgments of the Hon'ble High Court of Allahabad in the case of **Vivekanand Tiwari (supra)** and in the facts and circumstances, the decision in that case is squarely applicable to the present recruitment. In these circumstances, since the respondents are bound to obey the law as laid down, the **OA is partly allowed** with following directions:-

(I) The respondent No.1 and 2 shall recommence the selection process from the point at which the roster has been applied for preparation of the final select list by applying the distinct unit principle for each subject as

prescribed by the Hon'ble Apex Court and per law.

(II) In respect of subject of specialization of the applicant namely, Hindi, her selection would rest on the preparation of the select list as in the manner set out as above and she would be entitled to selection and appointment, if she shall within the category that emanates for such a redrawal of the panel.

7. In case after the selection exercise, the applicant gets an order for appointment, then the applicant shall be entitled for the benefits of seniority and fixation of pay from the date of appointment and shall not be entitled for any back wages. She shall be entitled for the benefit of seniority and fixation of pay in keeping with the fact that a junior person in the merit list may have joined in the services under the respondents on the basis of instant selection process and the respondents shall verify this specific aspect while passing orders. In the aforesaid terms, the OA is disposed of. No order as to costs."

11. He submits that as the applicant is similarly placed as the applicant in the case of Ms. Tanvee Harilal Chouhan (supra), the present OA may also be allowed in terms of T. H. Chouhan (supra).

12. The learned counsel for the respondents opposes the claim of the applicant on the basis of reply filed by the respondents and submits that the reservation has been applied post-wise and is not required to be applied subjectwise as being claimed

by the applicant. However, the learned counsel for the respondents has not been able to show as to how the present case is different than the case of T. H. Chauhan (supra). We are of the view that the claim of the applicant is covered by the order dated 07.02.2019 of this Tribunal in Tanvee Harilal Chauhan (supra).

13. In view of the aforesaid facts and circumstances, we partly allow the present OA with directions as contained in the case of Tanvee Harilal Chauhan (supra) and as recorded above.

14. The OA is disposed of in the above terms.

15. No order as to costs.

(R. N. Singh)
Member (J)

(Dr. Bhagwan Sahai)
Member (A)

V.

JD
19/12/19

